BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Chow Young Jr. and Maggie Emerson Dist. 5, Map 56P, Group B, Control Map 56P, Parcel 21.01 Commercial Property Tax Years 2005 & 2006	)) Madison County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$260,300	$1,026,200	$1,286,500	$514,600

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 25, 2007 in Jackson, Tennessee. The taxpayer was represented by Andrew H. Raines, Esq. The assessor of property, Francis Hunley, represented herself. Also in attendance at the hearing were Maggie Emerson, the current property owner, David M. Whalley, MAI, and Madison County staff appraiser Sherri Marbury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background

Subject property consists of a 1.61 acre tract improved with a two story office building which includes a full basement located at 33 Old Hickory Boulevard in Jackson, Tennessee. Subject building has approximately 24,960 square feet of usable area with 8,320 square feet on each floor including the basement. The basement is finished to a similar quality as the ground and second floors, but has no windows. The assessor's records indicate subject building was constructed in 1980.[1]

Subject property was originally known as the "Social Security Building" because it was constructed for and leased to the Social Security Administration. The property was transferred by foreclosure to Delta Life and Annuity Company, the holder of the mortgage, on July 25, 1990 for $600,000. On August 1, 1996, the property was sold to Delta Office Building, LLC for $550,000.

Subject property was listed for sale in late 2004 for $750,000 by Coldwell Banker.[2] It was on the market for 138 days.[3] On February 14, 2005, the taxpayers executed a sales agreement reflecting a purchase price of $655,000. The purchase price was reduced to

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[1] Mr. Whalley's appraisal report indicates at page 38 that subject building may have actually been constructed in 1975. The administrative judge finds it unnecessary to resolve this discrepancy as the cost approach is not being adopted as the basis of valuation. Moreover, the possibly earlier construction date does not materially impact the sales comparison or income approaches.

[2] A copy of the listing agreement was not introduced into evidence. Although it is unclear exactly what date the listing took effect, there is no dispute subject property was listed for sale in 2004.

[3] See exhibit #5 at page 14.

$637,403 after a price reduction of $17,097 was granted due to the need to replace the roof. The transaction closed on April 7, 2005.

In conjunction with the taxpayers' purchase, an appraisal report was prepared for the lender by David M. Whalley, MAI. Mr. Whalley concluded that subject property had a fair market value of $700,000 on March 28, 2005. Mr. Whalley noted at page 32 of his report (exhibit #5) that the assessor's 2004 appraised value of $1,079,000 appeared excessive.

Madison County underwent a countywide reappraisal effective January 1, 2005. As a result of the reappraisal, subject property was appraised at $1,302,500 beginning with tax year 2005.[4] In accordance with Tenn. Code Ann. § 67-5-508(a)(3), the assessor sent notice of the new value on May 6, 2005 to the designated agent of the owner of record as of January 1, 2005.

II. Jurisdiction

The threshold issue before the administrative judge concerns whether the State Board of Equalization has jurisdiction over tax year 2005. This issue arises from the fact that the disputed appraisal was not appealed to the Madison County Board of Equalization. Instead, a direct appeal was filed with the State Board of Equalization on February 14, 2006. No jurisdictional issue exists with respect to tax year 2006.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

[4] That value was subsequently reduced by the assessor of property to $1,286,500 on November 22, 2005.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayers must show that circumstances beyond their control prevented them from appealing to the Madison County Board of Equalization.

The administrative judge finds Ms. Emerson began contacting the assessor's office on or about April 15, 2005 concerning the *2004* appraised value of $1,079,000 noted in Mr. Whalley's appraisal report. The administrative judge finds that the taxpayers first became aware of the new appraisal for 2005 on November 21, 2005 when the tax bills were forwarded to them by the previous owner. As explained in the detailed chronology of events summarized in exhibit #9, the taxpayers' dealings with the assessor's office dragged out until February 2, 2006 and culminated in the filing of this appeal on February 14, 2006.

The administrative judge finds that the taxpayers established reasonable cause for not appealing the disputed 2005 appraisal to the Madison County Board of Equalization. The administrative judge finds that the Assessment Appeals Commission has found jurisdiction when a post-assessment date buyer is unaware of an assessment change because of the notice was sent to the owner of record as of January 1 of the tax year. See, e.g., *Vivian and Russ Ragsdale* (Davidson Co., Tax Year 2001) which is appended to this order and hereby incorporated by reference. Significantly, the Commission's decision was affirmed on appeal by Chancellor Dinkins in *Metropolitan Government of Nashville and Davidson County v. Ragsdale*, Davidson County, Chancery Court Case No. 04-1811-IV (April 18, 2006). For ease of reference, that decision is also appended to this order.

Based upon the foregoing, the administrative judge finds that the State Board of Equalization has jurisdiction over tax year 2005 on the basis of reasonable cause.

III. Value

The taxpayers contended that subject property should be valued at their April 7, 2005 purchase price of $637,403. In support of this position, Ms. Emerson essentially testified that subject property was purchased in an arm's length transaction after having been listed for sale in 2004 at $750,000 by Coldwell Banker.

Ms. Emerson testified that her purchase price reflected several factors which diminished subject property's market value. Most importantly, the roof needed replacing and the basement flooded. In addition, subject property is located next door to a shelter and on a curve.

Ms. Emerson also testified that at the time of their purchase, subject property was leased in its entirety to the State of Tennessee for $10.25 per square foot for all 24,960

square feet. The taxpayers subsequently allowed the State to vacate the basement due to health and liability concerns associated with ongoing moisture related problems in the basement. At that point, the taxpayers began utilizing the basement for storage.

In addition to relying on their purchase price, the taxpayers introduced into evidence the testimony and appraisal report of David M. Whalley, MAI. As will be discussed in greater detail below, Mr. Whalley determined that the cost, income and sales comparison approaches support value indications of $825,000, $660,000 and $765,000 respectively. Mr. Whalley gave the income approach greatest weight in his correlation and concluded subject property had a fair market value of $700,000 as of March 28, 2005. Mr. Whalley testified that his conclusion of value would not change as of January 1, 2005, or January 1, 2006, the relevant assessment dates pursuant to Tenn. Code Ann. § 67-5-504(a).

The assessor contended that subject property should remain valued at $1,286,500. In support of this position, the testimony and analysis of staff appraiser Sherri Marbury was introduced into evidence. Ms. Marbury focused on the income approach which she concluded supports a value of $1,337,000. In addition, Ms. Marbury analyzed two comparable sales which she asserted support value indications of $53.18 and $166.63 per square foot of weighted area for the subject which is presently appraised at $48.33 per square foot of weighted area. Ms. Marbury's report also included copies of building permits taken out between 1991 and 2007.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $750,000. As will be discussed below, the administrative judge finds that Mr. Whalley's appraisal report should initially receive greatest weight. The administrative judge finds that Mr. Whalley's report was thoroughly substantiated and constitutes the best evidence of subject property's market value.

Notwithstanding the foregoing, the administrative judge finds two adjustments to Mr. Whalley's report appropriate. First, the administrative judge finds that the State Board of Equalization has historically ruled that property taxes should be accounted for by using an effective tax rate rather than as an expense. See, e.g., *Frederick G. Kelsey* (Assessment Appeals Commission, Montgomery Co., Tax Year 1991). As shown in exhibit #6, this results in a revised value of $732,200. Second, the administrative judge finds that the indicated values of $732,200 (income), $825,000 (cost) and $765,000 (sales) should be correlated at $750,000.

The administrative judge finds it appropriate to primarily address the income approach since both appraisers gave it greatest weight in their reports. As summarized in exhibit #6, the primary differences between the parties concerned potential gross income and vacancy and credit loss.

Ms. Marbury assumed a potential gross income of $256,130 based upon the lease in effect on January 1, 2005. As previously noted, the lease provided for a rental rate of $10.25 per square foot for all the leaseable area. Although Ms. Marbury did not introduce any rent comparables into evidence, she asserted that market rent actually exceeds $10.25 per square foot.

In contrast, Mr. Whalley estimated potential gross income at only $215,488. The basis for Mr. Whalley's estimate began with the conclusion that the basement and second floor constitute a form of functional incurable obsolescence. As explained on page 69 of his report, "... Jackson has not been receptive to office buildings over one story, resulting in reduced rental rates for the second floor of the buildings. This holds true for basement offices also."

The administrative judge finds that Mr. Whalley analyzed five (5) rent comparables and concluded in pertinent part as follows:

> As can be seen, rental rates for comparable properties range from $8.13 per square foot to $11.50 per square foot per year for properties similar to the subject, with occupancies in the 95 to 100 percent range. The lowest rental was bid over seven years ago. All were gross as was the subject. Comparable 1 was judged to be a reasonably similar building. The lower lease in this building would most likely be increased to the $11.00 per SF rate at the next lease renewal. Comparables 2, 3 and 4 would require an upward adjustment for utilities, which is estimated in the $1.50 to $2.00 per SF per year range. Comparable 5 was judged to be a superior location but the most similar as it is a three story building.
>
> All comparables were considered to be good indications of the market in the area, with Comparable 3 given slightly less weight and Comparable 5 given slightly more weight in a determination of market rent of $11.50 per SF per year under a typical gross lease with the lessor liable for utilities.
>
> This rate is essentially for ground floor space. Appraisals of other two story buildings in this market indicate a second floor rate of approximately $2.50 less than the ground floor rates, indicating $9.00 per SF for the second floor. For the basement, rentals have generally been approximately 60% of the ground floor rate, indicating a market rate of $5.40 per SF for that space.

Exhibit #5 at 80.

The administrative judge finds Mr. Whalley went on to explain why he believed the current lease rate did not reflect market rent reasoning as follows:

> The subject is leased entirely to the State of Tennessee. It is a fairly typical State lease, with the owner liable for the taxes, insurance and maintenance, as well as the utilities. Janitorial is the liability of the tenant. The last lease extension was executed in February 1999, to extend thru June 2007. There is a termination clause after January 2006, which is approximately

> eight months out. The current rental rate, based on 24,899 net rentable SF, is $10.25 per SF per year. This results in total annual rentals of $255,215 at this 100% occupancy.
>
> The State is building a new office building in downtown Jackson, with the anticipation of canceling many of the office leases currently in place throughout Jackson. While not finalized, it is most likely that at least a third of the space, if not half, will be vacated at the first of the year. A prudent investor would in all likelihood anticipate this vacancy and make investment decisions based on market rates and not the current lease rates. Second floor and basement areas are considerably more difficult to fill in the Jackson market. Having an elevator does help somewhat, but they still must be discounted considerably. An additional negative for the subject is that a large tenant would have to be located. Generally, the larger tenants in this market have been from State leases. Rarely does anyone lease more than 2,000 to 3,000 SF.
>
> After considering the current tenants, the likelihood of them vacating at the end of the year, the difficulty in releasing basement and second floor space and the general location and layout of the subject, the income stream for the subject is estimated at $11.50 per SF per year for the ground floor, $9.00 per SF per year for the second floor and $5.40 per SF per year for the basement area.

Exhibit #5 at 80-81.

Respectfully, the administrative judge finds that Mr. Whalley's analysis was much more thorough than Ms. Marbury's and should receive greatest weight. The administrative judge finds Ms. Marbury's reliance on contract rent problematic for two reasons. First, the administrative judge finds that in many cases actual income is not indicative of the future. As explained in one authoritative text:

> To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits.
>
> Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.

Appraisal Institute, *The Appraisal of Real Estate* at 497 (12th ed. 2001). Second, the administrative judge finds that in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) the Assessment Appeals Commission ruled it "is the

entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. The administrative judge finds that for all practical purposes Ms. Marbury has appraised the leased fee estate rather than the fee simple estate.

With respect to a vacancy and credit loss allowance, Ms. Marbury basically stated that she allowed a 5% rate despite the fact subject property was 100% leased on January 1, 2005. Mr. Whalley, in contrast, assumed vacancy rates of 10%, 25% and 35% for the ground floor, second floor and basement respectively. The basis for Mr. Whalley's estimates was quoted above in the context of his analysis of market rent. In addition, Mr. Whalley noted at page 81 of his report that occupancies have historically averaged 90%-92% for the *ground floor* of office buildings in this part of Jackson.

The administrative judge finds that the same conclusions noted above with respect to potential gross income apply to vacancy and credit loss. Accordingly, the administrative judge finds that Mr. Whalley's vacancy estimates should receive greatest weight.

The administrative judge finds it unnecessary to discuss the sales comparison approach in any detail. The administrative judge simply finds that Mr. Whalley's analysis was much more detailed and better substantiated.

The administrative judge finds Mr. Whalley's conclusion of value is also supported by both the listing of subject property and the taxpayer's purchase.[5] The administrative judge finds that subject property was on the market beginning in 2004 for 138 days at a list price of only $750,000. The administrative judge finds it inconceivable subject property would have remained on the market for that length of time if it was truly worth anywhere near the assessor's contended value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$260,300	$489,700	$750,000	$300,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

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[5] The administrative judge finds that post-assessment date sales have been allowed into evidence to confirm what could have reasonably been assumed on the assessment date or a trend in values. See *George W. Hussey* (Assessment Appeals Commission, Davidson Co., Tax Year 1991); and *Christine Hopkins* (Assessment Appeals Commission, Franklin, Co., Tax Years 1995 & 1996). Similarly, sales that close after the assessment date, but were under contract prior to the assessment date have been allowed into evidence. See *Crown American Properties* (Assessment Appeals Commission, Anderson Co., Tax Years 2002 & 2003).

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of May, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Andrew H. Raines, Esq.
David C. Scruggs, Esq.
Frances Hunley, Assessor of Property

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,

Petitioner,

vs.

VIVIAN & RUSS RAGSDALE

Respondents.

FOH, II

CASE NO. 04-1811-IV

FILED
2006 APR 18 PM 3:45
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C.&M.

COPY

ORDER

For the reasons set forth in the Memorandum Opinion filed contemporaneously herewith, the decision of the Assessment Appeals Commission is AFFIRMED and this case be and the same is hereby DISMISSED. Costs, including any facsimile filing fees, are assessed against Petitioenr, for which execution may issue if necessary.

ENTER this 18th day of April, 2006.

RICHARD H. DINKINS
CHANCELLOR

cc: Mary Ellen Knack, Esq.
Margaret O. Darby, Esq.
Vivian and Russ Ragsdale

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

Deputy Clerk and Master
Chancery Court

4/18/06
Date

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,

Petitioner,

vs.

VIVIAN & RUSS RAGSDALE

Respondents.

CASE NO. 04-1811-IV

MEMORANDUM OPINION

In this action, Petitioner, the Metropolitan Government of Nashville and Davidson County, seeks a review of the Final Decision and Order of the State Board of Equalization Assessment Appeals Commission (the "Commission") allowing Respondents, Vivian and Russ Ragsdale (the "Ragsdales"), to appeal the 2001 reappraisal of their property to the State Board of Equalization. Petitioner contends that the Commission lacked jurisdiction to hear the appeal and that it erred in finding reasonable cause for Respondent's alleged late filing of their appeal.

I. SCOPE OF REVIEW

Judicial review of this matter is conducted pursuant to Tenn. Code Ann. § 67-5-1511 and is *de novo*. See *Richardson v. Tennessee Assessment Appeals Comm'n*, 828 S.W.2d 403 (Tenn. Ct. App. 1991). As no party has introduced additional or supplemental proof, this Court's review is limited to the administrative record.

II. FACTUAL BACKGROUND

Petitioner conducted a reassessment of property in Davidson County in 2001; the Assessor sent the requisite notice of the reappraisal of the property at issue to the record owner of the property at or about the time the property sold. The Ragsdales purchased the property on April 26, 2001, and did not receive the notice of reappraisal. In November 2001, the Ragsdales received a courtesy copy of their bill for 2001 taxes and immediately sought recourse through the County (Tr. 6) and to the State Board of Equalization (Rec. 24-27).

The Administrative Law Judge assigned to the case held that the Ragsdales had failed to show reasonable cause for not adhering to the statutory deadlines for appealing to the State board. (Rec. 19-20). On appeal, the Assessment Appeals Commission reversed the Administrative Law Judge's decision, determining that reasonable cause existed for the late appeal to the state Board, and remanded the case to the Board for a hearing on the merits of the Ragsdales' claim. (Rec. 7-8). Agreement was subsequently reached between Petitioner and the Ragsdales on an assessment for their proerty. (Rec. 2-3).

III. DISCUSSION

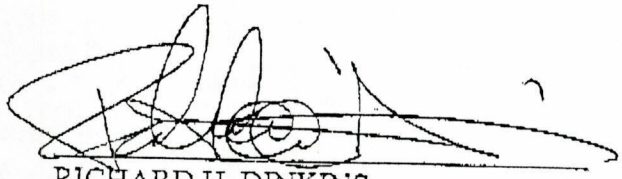
Tenn. Code Ann. § 67-5-1412(e) provides for ceratin time limits for filing an appeal to the State Board of Equalization and states in pertinent part: "If notice [of the assessment pursuant to Tenn. Code Ann. § 67-5-508] was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment." Id. The statute goes further to grant the taxpayer the right to a hearing to show reasonable cause for failing to file a timely appeal. The "tax billing date for the assessment" is not defined in the statute.

The custom and practice is for the Assessor to send the change of appraisal notice to the owner of record as of January 1; the assessment notice in this case was sent to the former owner on April 17th. (Tr. 11). At the time the property sold, 2001 taxes were not due and payable, and the first notice the Ragsdales received that their property had been reassessed was a courtesy tax bill sent to them in November of 2001. (Tr. 8). The original tax bill was sent to the mortgage lender in October 2001.[1]

Taking the record as a whole the Court finds that reasonable cause within the meaning of the statute has been shown by the Ragsdales for not filing a timely appeal. The Ragsdales have shown that they did not receive notice of the reassessment and, consequently, could not have known of the necessity to appeal. Upon receiving notice, they acted promptly and in accordance with the statute.

IV. CONCLUSION

For the foregoing reasons, the judgment of the Assessment Appeals Commission will be AFFIRMED.



RICHARD H. DINKINS
CHANCELLOR

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[1] Petitioner argues that the Ragsdales' mortgage company was their agent with responsibility for taxes and, consequently, when the tax bill was sent to the mortgage company the time for filing the appeal regarding the assessment began to run. *See* Brief of Petitioner at 6-7; Exhibit A to the Brief of Petitioner. (This Exhibit was not a part of the administrative record). The designation of the mortgage company to receive the tax bill does not relieve the statutory obligation that the notice of assessment be sent to the property owner (who is also identified on exhibit A). The import of the tax bill in Tenn. Code Ann. § 67-5-1412 is only with reference to the "tax billing date." Assuming that the purpose of furnishing the bill to the mortgage company was to have the taxes paid from an escrow account set up in conjunction with the Ragsdales' purchase of the property, the mortgage company would have had no reason to question the reappraisal.

cc: Mary Ellen Knack, Esq.
Margaret O. Darby, Esq.
Vivian and Russ Ragsdale

COPIES TO ATTORNEYS AND PRO SE LITIGANTS
AT THE ABOVE ADDRESSES
DATE 4/18/06 CLERK

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	VIVIAN & RUSS RAGSDALE	)	
	Map 063-16-0, Parcel 26.00	)	Davidson
	Residential Property	)	County
	Tax Year 2001	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined the State Board lacked jurisdiction to hear the appeal because the taxpayer failed to first appeal to the Davidson County Board of Equalization or to timely appeal to the State Board. The appeal was heard on April 14, 2003 before Commission members Isenberg (presiding), Ishie, and Rochford, sitting with an administrative judge.[1] Mr. Ragsdale represented himself and the assessor was represented by Mr. Daniel Cortez of the Metropolitan Department of Law.

Findings of fact and conclusions of law

The taxpayer purchased the property on April 26, 2001, and the 2001 Davidson County reappraisal notice sent at about the time of this transaction was listed in the name of the seller, Stephen Meyer.[2] This notice was probably forwarded to Mr. Meyer at *his* new address pursuant to a postal forwarding order, and in any event the assessment change notice did not come to the Ragsdales' attention at all. The administrative judge determined this did not make any difference since even if no notice had been sent, the taxpayers would have had only until forty-five days from the tax billing date to appeal to the State Board and they did not meet this requirement either.

Tenn. Code Ann. §67-5-1412 (e) provides as follows:

> (e) Appeals to the state board of equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to §67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. *If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment.* The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer

[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

[2] The earliest the assessor could have determined the property was sold to the Ragsdales, would have been some time after the deed was recorded.

up to March 1 of the year subsequent to the year in which the assessment was made. (Emphasis supplied)

Under the circumstances, the Ragsdales having purchased and moved into the property during the time when the notice of new assessment was sent, it is apparent that no effective notice of the new assessment was sent to those most interested in receiving it. This is not the fault of the assessor, of course, but it is a circumstance we cannot ignore in determining whether the taxpayer has been afforded a reasonable opportunity to appeal the new assessment.

The savings clause of the statute, highlighted above, was evidently intended to give the taxpayer a final right of appeal where the assessment change notice was not sent, by treating the tax notice as a substitute for the assessment change notice or perhaps, by assuming that a normally curious taxpayer would inquire about the assessment even if the taxpayer received no tax notice within forty-five days after the normal tax billing date. Since there is no statutory common billing date, the savings clause must refer to the actual date the trustee sent a tax bill to the taxpayer.[3] The only testimony regarding the tax bill in this case was that Mr. Ragsdale was sent a duplicate or "courtesy" tax notice in November or December. The primary tax notice was sent to his mortgagee. Mr. Ragsdale appealed to the State Board on or about December 11, within forty-five days of the date of actual notice in the form of the duplicate sent to him by the trustee. We find no basis in the facts of this case for concluding that Mr. Ragsdale should have known of the assessment change any earlier than the date he was sent this latter notice, and therefore reasonable cause to excuse the late appeal to the State Board, has been established.

ORDER

It is therefore ORDERED, that this matter is remanded for a hearing before the administrative judge on the merits of the taxpayer's claim of an excessive assessment. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

[3] The first Monday in October is the assessor's deadline to provide a tax roll from which the trustee sends tax bills (Tenn. Code Ann. §67-5-807). It is also the date taxes become payable (Tenn. Code Ann. §67-1-701), but it is not necessarily the tax billing date.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Aug 13, 2003

Presiding member

ATTEST:

Executive Secretary

cc: Mr. Russ Ragsdale
Ms. JoAnn North, Assessor
Mr. Daniel Cortez, Metro Legal Dept.